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AUG 15 2008

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| In re Application of | : | |
| Hiroi et al. | : | |
| Application No. 10/758116 | : | |
| Filing or 371(c) Date: 01/16/2004 | : | ON PETITION |
| Patent Number: 7303719 | : | |
| Issue Date: 12/04/2007 | : | |
| Title of Invention: | : | |
| RESIN MOLDED ARTICLES | : | |

This is a decision on the Petition for Duplicate Letters Patent Pursuant to 37 C.F.R. § 1.182, filed June 19, 2008. The petition is properly treated under.

The petition is **DISMISSED**.

Petitioner files the present petition requesting a duplicate Letters Patent, and in support of the petition asserts that the original letters Patent was never received at the correspondence address indicated on the PTOL-85B. Petitioner does not include an authorization to charge the petition fee to Petitioner's deposit account¹.

Petitioner is advised that where nonreceipt of the letters Patent is alleged (no petition fee), the showing required is the same as that set forth in MPEP 711.03(c).

Applicable Law, Rules and MPEP

The MPEP 711.03(c)A, Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action, provides

In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action.

¹ Petitioner is advised that the fee for a petition under 37 CFR 1.182 increased to \$400.00 effective December 8, 2004, and that a current fee schedule is available at www.uspto.gov.

That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133). To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response. Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions). (Emphasis supplied)

MPEP 711.03(c)

The petition is dismissed without prejudice. Petitioner should file a request for reconsideration of petition and include the necessary statement(s) and evidence.

Alternatively, Petitioner may file a request for reconsideration of petition and include the appropriate petition fee. Petitioner is advised that the fee for a petition under 37 CFR 1.182 increased to \$400.00 effective December 8, 2004. Before the petition may be addressed on its merits, the petition fee is required.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

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Director for Patents
Post Office Box 1450
Alexandria, VA 22313-1450**

By hand: Customer Service Window
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Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/
Derek L. Woods
Attorney
Office of Petitions